



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
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5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Monica D. Batanero
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Mia N. Robertshaw
Loren W. Soukup
Patrick C. Wilson
Frank Zotter, Jr.

Of Counsel
Robert J. Henry
Margaret M. Merchat
Virginia A. Riegel

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**To: Superintendents/Presidents/Chancellors, Member Community
College Districts**

**From: Damara L. Moore ^{DM}
Senior Associate General Counsel**

**Subject: September 1 Deadline for Preschool Staff/Volunteers to Get
Immunizations
Memo No. 14-2016(CC)**

By now, you are all aware of SB 277’s mandate that students be immunized unless they have a medical exemption. But, are you aware that as of September 1, 2016, due to another change in the law, staff and volunteers working in day care centers, including infant centers, preschools, extended day care facilities, and school age child care centers, must also receive vaccinations as a condition of their service?

The law now requires that any employee or “volunteer,” defined as any nonemployee who provides care and supervision to children in care, cannot be employed or volunteer at a day care center if he or she has not been immunized against influenza, pertussis, and measles. Cal. H&S Code § 1596.7995.

Timelines

Each employee and volunteer shall receive an influenza vaccination between August 1 and December 1 of each year. If a person has done so, but needs additional time to gather proof of vaccinations, the person may be employed or volunteer conditionally for a maximum of 30 days upon signing and submitting a written statement attesting that he or she has been immunized as required. Note that this “conditional” permission to continue serving the site only applies if the employee or volunteer actually has been vaccinated, not to afford that person additional time to get vaccinated. Cal. H&S Code § 1596.7995.

Exceptions

A person is exempt from the requirements of this statute only if one of the following circumstances applies:



- (1) The person submits a written statement from a licensed physician declaring that because of the person's physical condition or medical circumstances, immunization is not safe.
- (2) The person submits a written statement from a licensed physician providing that the person has evidence of current immunity to influenza, pertussis, and measles.
- (3) The person submits a written declaration that he or she has declined the influenza vaccination. This exemption applies only to the influenza vaccine.
- (4) The person was hired after December 1 of the previous year and before August 1 of the current year. This exemption applies only to the influenza vaccine during the first year of employment or volunteering.

Cal. H&S Code § 1596.7995.

Proof of Compliance

The day care center “shall maintain documentation of the required immunizations or exemptions from immunization in the person's personnel record that is maintained by the day care center.” Cal. H&S Code § 1596.7995. Of course, some itinerant staff may not have a personnel record at the day care center site. The day care center site could maintain this record on the site, or some local educational agencies are maintaining a master list of employees and providing this list to day care centers, while maintaining the immunization record itself within the staff member's personnel file. The latter option appears permissible but has not been vetted by the California Department of Education. The most conservative approach would be for the day care site to keep all records of volunteer and staff immunizations.

Implications of the Law

This law may lead to staff shortfalls while staff get immunized, as the law does not permit non-vaccinated individuals to work with students at the day care facility. This law will affect pre-employment requirements for all day care employees and screening for prospective volunteers. This law may also lead school districts and county offices of education to negotiate how these immunizations will be provided. Some local educational agencies are providing the vaccinations on-site. Note that, under the Affordable Care Act, all insured individuals are entitled to receive vaccinations with no co-pay from their physicians. However, blood tests to show immunity may include a cost, depending on the health care plan. As this is a term and condition of employment that is required by law, this issue itself is not negotiable, but the effects of it are.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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